

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WORDTECH SYSTEMS, INC.,

Plaintiff,

v.

INTEGRATED NETWORK SOLUTIONS,
CORP., dba INTEGRATED
SYSTEMS, aka INTERNET
NETWORK STORAGE COMPANY,
aka INSC; NASSER KATEMI;
HAMID ASSADIAN; BRIAN J.
DEAN; MICHAEL F. ELLSWORTH;
EHTERAM GHODSIAN; INTEGRATED
NETWORK SOLUTIONS, INC., a
Nevada Corporation; SHOHREH
JAVADI; and SAN JUAN UNIFIED
SCHOOL DISTRICT, and DOES 1-
50,

Defendants.

No. 2:04-cv-1971-MCE-JFM

MEMORANDUM AND ORDER

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On April 14, 2006, WordTech Systems, Inc. ("Plaintiff")
moved for modification of the Pretrial Scheduling Order ("PTSO")
based in part on complications arising from the retirement of
presiding magistrate judge Peter A. Nowinski.

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1 As explained below, the Court finds sufficient cause to issue an
2 amended PTSO forthwith.¹

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4 **BACKGROUND**

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6 On September 22, 2004, Plaintiff, a California corporation
7 and patent owner, filed an infringement action against multiple
8 defendants including Integrated Network Solutions, Corp. ("INS"),
9 Nasser Khatemi and Hamid Assadian ("Defendants").

10 On June 13, 2005, this Court issued a PTSO setting forth all
11 relevant dates for the course of these proceedings. In that
12 Order, the Court set a trial date for July 7, 2005, with all
13 discovery to be completed by September 23, 2005. Defendant INS
14 together with Defendant San Juan Unified School District filed
15 timely objections to the PTSO seeking an extension of the
16 discovery completion date. The Court was persuaded by the
17 objections and extended the discovery completion date to January
18 20, 2006.

19 Both sides filed Motions to Compel Discovery during November
20 and December 2005. Those Motions were to be heard by now retired
21 magistrate judge Peter A. Nowinski. In an effort to resolve the
22 case, Judge Nowinski sought an agreement from both sides to
23 pursue settlement rather than address the pending discovery
24 motions.

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¹Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).

1 Both sides agreed to pursue settlement and the following relevant
2 motions were withdrawn: Plaintiff's Motion to Compel Discovery
3 Responses; Plaintiff's Motion for Protective Order; and
4 Defendants Motion to Compel. Prior to the conclusion of the
5 settlement negotiations, Judge Nowinski retired. Unfortunately,
6 the Parties' efforts to settle were fruitless leaving those
7 withdrawn discovery motions unresolved. The case was then
8 transferred to magistrate judge John F. Moulds. The Parties
9 reasserted their discovery motions before Judge Moulds, however,
10 those Motions were denied due to the expiration of the discovery
11 completion date set by this Court. Plaintiff now seeks
12 modification of the PTSO to extend the discovery completion date
13 and permit them to reassert all withdrawn discovery motions.

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15 **STANDARD**
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17 Generally, the Court is required to enter a PTSO within 120
18 days of the filing of the complaint. Fed. R. Civ. P. 16(b). The
19 scheduling order "controls the subsequent course of the action"
20 unless modified by the Court. Fed. R. Civ. P. 16(e). Orders
21 entered before the final pretrial conference may be modified upon
22 a showing of "good cause," Fed. R. Civ. P. 16(b), but orders
23 "following a final pretrial conference shall be modified only to
24 prevent manifest injustice." Fed. R. Civ. P. 16(e); see also
25 *Johnson v. Mammoth Recreations*, 975 F.2d 604, 608 (9th Cir.
26 1992).

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1 Rule 16(b)'s "good cause" standard primarily considers the
2 diligence of the party seeking the amendment. *Id.* at 609. The
3 district court may modify the pretrial schedule "if it cannot
4 reasonably be met despite the diligence of the party seeking the
5 extension." Fed. R. Civ. P. 16 advisory committee's notes (1983
6 amendment). *Id.*

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8 **ANALYSIS**
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10 Defendants advance a two-fold argument in opposition to
11 Plaintiff's Motion. First, they aver that Plaintiff violated
12 Local Rule 6-142(b) when it filed the current Motion and, second,
13 that this Court has declared no further discovery extensions
14 would be permitted. In reply, Plaintiff argues it is not seeking
15 a discovery extension but a modification to the PTSO and that
16 good cause exists for its request. In essence, Plaintiff
17 contends that good cause exists because it served all original
18 discovery and relative motions in a timely manner and it only
19 withdrew its Motions based on the Parties' agreement to pursue
20 settlement.

21 The Parties were clearly diligent in seeking discovery.
22 Plaintiff is quite correct that the Motions to Compel were timely
23 filed and only withdrawn in anticipation of settlement which
24 failed to materialize. The Court is persuaded that good cause
25 exists sufficient that an amended PTSO is warranted.

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CONCLUSION

Good cause appearing therefore, the Court shall issue an Amended PTSO. The Discovery Completion Date shall be set sixty days (60) days from the date of this Order.

IT IS SO ORDERED.

DATED: September 8, 2006

A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE